

201 KAR 7:100. Procedure for processing complaints.

RELATES TO: KRS 334.120, 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to outline the administrative procedure for the processing of complaints.

Section 1. Definitions. (1) "Chairman" means the chairman of the board.

(2) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 334 or the administrative regulations promulgated thereunder by a licensee or other person.

(3) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of KRS Chapter 334 or the administrative regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensee or other person and commences a formal disciplinary proceeding.

(5) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal disposition of any matter without further recourse to formal disciplinary procedures.

(7) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) Complaints may be submitted by an individual, organization, or entity.

(2) Complaints shall be in writing and shall be signed by the person offering the complaint.

(3) The board may file a complaint based on information in its possession.

(4) A copy of the complaint shall be sent to the licensed individual named in the complaint along with a request for that individual's response to the complaint and a copy of the following documentation:

(a) Sales contract;

(b) Audiogram;

(c) Signed medical waiver;

(d) Delivery statement; and

(e) Record of service to the client.

(5) The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of fifteen (15) days from the date of receipt to make a response.

(6) Failure to respond in a timely fashion may constitute unethical conduct as set forth by administrative regulation.

(7) The board shall also request from the complaining party, a copy of the following documents:

(a) Sales contract;

(b) Audiogram; and

(c) Delivery statement.

Section 3. Board Review and Decision on Hearing. (1) After the receipt of a complaint, and the time period for the responses has expired, the board shall review the material received pursuant to

Section 2 of this administrative regulation and shall make a determination as to the proper assignment of the complaint. At this point the board may make a preliminary determination that one (1) or more of the following conditions exist:

(a) The consumer appears to be entitled to a refund of some or all moneys paid for the hearing instrument;

(b) The individual may have violated one (1) or more sections of the statutes or administrative regulations, but there is not enough evidence to proceed without further investigation;

(c) The individual may have violated one (1) or more sections of the statutes or administrative regulations and there is sufficient evidence to proceed;

(d) The individual appears to be practicing without benefit of appropriate licensure and the matter may be pursued through criminal prosecution or injunctive relief within the court system; or

(e) The individual appears to have functioned in compliance with all appropriate statutes and administrative regulations and there appears to be no cause of action for the board to pursue.

(2) When in the opinion of the board, the complaining party appears to be entitled to a refund of some or all moneys, the board may direct the individual to make a refund.

(3) When in the opinion of the board, the information gathered indicates that a violation of the statutes or administrative regulations may have occurred, but the board does not have sufficient evidence to file a formal complaint, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings to the board at their earliest opportunity.

(4) When in the opinion of the board, the information gathered indicates that the filing of a formal complaint is warranted, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 5 of this administrative regulation.

(5) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be selling and fitting hearing instruments without proper licensure, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. The complaint shall be forwarded to the county attorney of the county where the alleged violation may have occurred alleging the selling and fitting hearing instruments without appropriate licensure with a request that appropriate action be taken under KRS 334.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized sale and fitting of hearing instruments.

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately disposing of the matter.

(2) Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.

Section 5. Notice and Service of Process. (1) Any notice required by KRS Chapter 334 or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or if known, by service on the named individual's attorney of record, if appropriate. Refusal or service avoidance shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, that notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing. (4 Ky.R. 92; eff. 10-5-77; Am. 20 Ky.R. 1649; 2321; eff. 2-10-94.)